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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Kitsukawa)	Art Unit: 2614
)	
Serial No.: 09/802,635)	Examiner: Manning
)	
Filed: March 9, 2001)	50P4371
)	
For: SYSTEM AND METHOD FOR BILLING FOR)	November 8, 2005
INTERACTIVE TELEVISION)	750 B STREET, Suite 3120
)	San Diego, CA 92101
)	

APPEAL BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

This brief is submitted under 35 U.S.C. §134 and is in accordance with 37 C.F.R. Parts 1, 5, 10, 11, and 41, effective September 13, 2004 and published at 69 Fed. Reg. 155 (August 2004). This brief is further to Appellant's Notice of Appeal filed herewith.

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(1) Real Party in Interest

The real party in interest is Sony Corp.

(2) Related Appeals/Interferences

No other appeals or interferences exist which relate to the present application or appeal.

(3) Status of Claims

Claims 1-5 and 7-18 are pending and finally rejected, claims 19-26 are canceled.

(4) Status of Amendments

No amendments are outstanding.

(5) Concise Explanation of Subject Matter in Each Independent Claim, with Page and Figure Nos.

As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

Claim 1 sets forth a method for billing for interactive television that includes establishing an access restriction table for at least one consumer that lists virtual channels and an access flag for each channel, with each access flag indicating whether the channel can be accessed based on user ID, table 1, page 13. The method includes enabling the consumer to use a television to access content associated with a virtual channel,

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and selectively restricting access to content using the access flags, page 13, last paragraph. Access records are recorded based on consumer access activity related to the content, figure 6, page 14, line 8. An entity can be billed based on the access record, id.

Claim 2 recites a method for billing for interactive television that includes enabling a consumer to use a television to access content provided by at least one Web site and at least one television signal source, and recording at least one access record based on consumer access of content from the Web site, supra. The method of Claim 2 also encompasses billing an entity based on the access record, supra. The access restriction table correlates interactive television channel numbers to Web site addresses, supra.

Claim 10 sets forth an interactive television system that has a Web server (14, figure 1, page 5, line 11) and an interactive television system server 18, id., line 18. The system also includes a television signal source (28, figure 1, page 6, line 15) and an interactive television (22, figure 1, page 6, line 13). The interactive television receives information from the Web server, the interactive television system server, and the television signal source, with the system including a program for billing entities based on accessing Web sites and discriminating between public Web sites and private Web sites.

(6) Grounds of Rejection to be Reviewed on Appeal

(a) Claim 1 has been rejected under 35 U.S.C. §103 as being unpatentable over Matthews, III et al. (USPN 5,914,746, hereinafter "Matthews"), in view of Breslauer et al., USPN 6,637,027, Kwok et al., USPN 5,382,983 and Watson, USPN 5,289,271.

(b) Claims 2, 3, and 5-9 have been rejected under 35 U.S.C. §103 as being unpatentable over Matthews, III et al. in view of Breslauer et al. and Watson.

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(c) Claims 4 and 10-18 have been rejected under 35 U.S.C. §103 as being unpatentable over Matthews, III et al. in view of Breslauer et al. and Watson and further in view of Linehan, USPP 2004/0249726.

(7) **Argument**

As an initial matter, it is noted that according to the Patent Office, a new ground of rejection in an examiner's answer should be "rare", and should be levied only in response to such things as newly presented arguments by Applicant or to address a claim that the examiner previously failed to address, 69 Fed. Reg. 155 (August 2004), see, e.g., pages 49963 and 49980. Furthermore, a new ground of rejection must be approved by the Technology Center Director or designee and in any case must come accompanied with the initials of the conferees of the appeal conference, *id.*, page 49979.

(a) Of relevance to amended Claim 1 is the allegation that the flag is taught by Breslauer at col. 4, lines 1-25 and col. 8, lines 20-28. This is incorrect. Nowhere does Breslauer even mention the word "flag" or any cognizable synonym. Col. 4, lines 1-25 simply discusses a conditional access provider that limits access to a variety of multimedia programming, without stating how. Col. 8, lines 20-28 teaches only that the user's access rights are checked before granting access, again without stating how, precisely, the "access rights" are "checked". Based on the current record, the rejections should be reversed.

(b) Were the references to be combined as proposed Claim 2 would not result, because Claim 2 requires billing an entity based on an access record of accessing content from a Web site, whereas Watson bills only

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for accessing TV channels. Accordingly, combining Watson with the other references in accordance with their teachings (as opposed to using Claim 2 as a template for hindsight reconstruction) would provide the virtual channel table of Matthews while billing the user only for tuning to channel numbers corresponding to actual TV stations as taught by Watson. That is, none of the references suggest billing for accessing a Web site that may be accessed by means of a channel restriction table. Only with the benefit of knowing what Claim 2 recites can the teachings of Watson morph into unpatentability.

(c) Claim 10 requires a billing program that discriminates between public Web sites and private Web sites. The examiner has alleged that such discrimination for billing purposes is present in paragraph 33 of Linehan. This is puzzling, because the relied-upon portion says nothing at all about discriminating much less as to discriminating between public Web sites and private Web sites. For the Board's convenience, paragraph 33 states, in its entirety:


"Revenue collection is an important issue for TV originators. In the context of interactive TV commerce as described herein, the TV originators may hope to receive a percentage of sales made by merchants from viewers of television programs or advertisements associated with the TV originator. Depending upon commercial market conditions, merchants may be willing to grant such a percentage in order to exploit TV as an additional channel to reach consumers. Banks and credit card associations may be willing to assist in revenue collection (using the techniques of the present invention, as described below) in order to extend their credit and debit card systems into the new world of TV commerce."

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Respectfully submitted,



John L. Rogitz
Registration No. 33,549
Attorney of Record
750 B Street, Suite 3120
San Diego, CA 92101
Telephone: (619) 338-8075

JLR:jg

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APPENDIX A - APPEALED CLAIMS

1. A method for billing for interactive television, comprising the acts of:
establishing an access restriction table for at least one consumer, the access restriction table listing plural virtual channels and an access flag for each channel, each access flag indicating whether the channel can be accessed based on user ID;
enabling the consumer to use a television to access content associated with a virtual channel;
selectively restricting access to content using the access flags;
recording at least one access record based on consumer access activity related to the content; and
billing an entity at least partially based on the access record.
2. A method for billing for interactive television, comprising the acts of:
enabling a consumer to use a television to access content provided by at least one Web site and at least one television signal source;
recording at least one access record based on consumer access of content from the Web site; and
billing an entity at least partially based on the access record, wherein the access restriction table correlates interactive television channel numbers to Web site addresses.
3. The method of Claim 2, wherein the entity is the consumer.
4. The method of Claim 2, wherein the entity is an owner or publisher of accessed content.
5. The method of Claim 2, further comprising the act of:
restricting access to content using an access flag in an access restriction table.
7. The method of Claim 2, further comprising the act of:
storing the access record in a database at the television.
8. The method of Claim 7, further comprising the acts of:
retrieving the access record from the database; and
determining whether the access record contains billable content.
9. The method of Claim 8, further comprising the acts of:
constructing a billing list of access records containing billable content; and
billing the entity at least partially based on the billing list.
10. An interactive television system, comprising:
at least one Web server;

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at least one interactive television system server;
at least one television signal source; and
at least one interactive television, the interactive television receiving information from the Web server, the interactive television system server, and the television signal source, the system including a program for billing entities based at least in part on accessing Web sites, the program discriminating between public Web sites and private Web sites.

11. The system of Claim 10, wherein the program includes:
logic means for enabling a consumer to use a television to access content provided by at least one Web server and at least one television signal source;
logic means for recording at least one access record based on consumer access of the content; and
logic means for billing an entity at least partially based on the access record.

12. The system of Claim 11, wherein the entity is the consumer.

13. The system of Claim 11, wherein the entity is an owner or publisher of accessed content.

14. The system of Claim 11, wherein the program further includes:
logic means for restricting access to content using an access flag in an access restriction table.

15. The system of Claim 14, wherein the access restriction table correlates interactive television channel numbers to Web site addresses.

16. The system of Claim 11, wherein the program further includes: logic means for storing the access record in a database.

17. The system of Claim 16, wherein the program further includes: logic means for retrieving the access record from the database; and
logic means for determining whether the access record contains billable content.

18. The system of Claim 17, wherein the program further includes:
logic means for constructing a billing list of access records containing billable content; and
logic means for billing the entity at least partially based on the billing list.

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APPENDIX B - EVIDENCE

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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APPENDIX C - RELATED PROCEEDINGS

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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